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J. Kuckpatrick
PLMF

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-191959

DATE: October 20, 1978

MATTER OF: Samuel R. Sappo - Retroactive Promotion and Backpay

DIGEST: An employee detailed to a higher grade position is not entitled to a retroactive temporary promotion to the higher grade, and backpay since he did not meet the Civil Service qualification standards (education requirements) for the position.

This decision responds to the request of Samuel R. Sappo for reconsideration of his claim for a retroactive temporary promotion with backpay denied by our Claims Division in its settlement certificate Z-2769356, December 14, 1977.

The record shows that for the period September 30, 1971, through May 7, 1973, while occupying a position classified as grade GS-13, Chief, Branch of Motion Pictures (GS-1071 series), in the Bureau of Mines, Department of the Interior, Mr. Sappo was detailed to serve in a higher level position of grade GS-14, Supervisory Education Specialist (GS-1710 series). By letter of July 12, 1977, the Chief, Division of Personnel, Bureau of Mines, informed Mr. Sappo that the records in his official Personnel Folder did not indicate he possessed the minimum education requirements in United States Civil Service Commission (CSC) Handbook X-118 for the position of Supervisory Education Specialist, GS-1710-14. Consequently, it was concluded that Mr. Sappo could not receive a retroactive temporary promotion for his extended detail to the position having this job classification.

In our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed at 56 Comp. Gen. 427 (1977), we held that an employee had to satisfy the requirements for a temporary promotion before the remedial action authorized by those decisions - retroactive temporary promotion with backpay - could be granted.

The CSC promulgated implementing instructions for our Turner-Caldwell decisions in CSC Bulletin 300-40, dated May 25, 1977. In paragraph 8c of the Bulletin, the CSC emphasized that an employee has to satisfy both statutory requirements and the CSC's regulatory requirements in order to be promoted, and it listed examples of requirements that are applicable, including the minimum CSC qualification standards for competitive positions as set forth in CSC Handbook X-118C.

The CSC's minimum qualifications in Handbook X-118 for all positions in the Education and Vocational Training Series (GS-1710) require formal

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education in an accredited college or university for the teaching profession. Mr. Sappo has not shown that he possesses this qualification as set forth in Handbook X-118.

We believe the qualifications in Handbook X-118 are in general reasonably related to positions in the competitive service. They allow for considerable flexibility in examining the individual employee's suitability for a position. Meeting their standards is definitely a legal requirement for promotion.

The file indicates that sometime after Mr. Sappo's detail terminated a position at the grade GS-14 level in the GS-1071 series was established, and Mr. Sappo, meeting all of the qualifications of the position, was promoted to fill this vacancy. Mr. Sappo states that his present job, Audio Visual Production Officer, GS-1071-14 (Chief, Audio Visual Office--Education and Training), is a combination of all of the Supervisory, Education Specialist, GS-1710-14, duties and responsibilities and the Chief, Branch of Motion Pictures, GS-1071-13 duties and responsibilities. However, the position to which Mr. Sappo had been detailed could not have been retroactively reclassified to grade GS-14 in the GS-1071 series. The U.S. Supreme Court in United States v. Testan, 424 U.S. 392 (1976), held that reclassification actions upgrading a position wrongfully classified may not be made retroactive.

Concerning Mr. Sappo's superior performance award for the first year of his detail, it is to be noted that it was granted incident to performance for the position he occupied rather than the position to which he had been temporarily detailed. He had performed duties for both positions.

Accordingly, the disallowance of Mr. Sappo's claim by our Claims Division is sustained.


Deputy Comptroller General
of the United States